IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 4938 of 2007(K)

OA.341/2002 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONERS:

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1. MANOJ SEBASTIAN, S/O.T.M.SEBASTIAN, AGED 40, THARAPPEL HOUSE, MADUKKAKUNNU, P.O., PALA, KOTTAYAM DISTRICT.

2. T.M.SEBASTIAN, THARAPPEL HOUSE, MADUKKAKUNNU P.O., PALA, KOTTAYAM DISTRICT.

3. LILLYKUTTY SEBASTIAN, DO. DO.

4. SHAJIMON THARAPPEL, OF DO. DO.

BY ADV. SRI.JOHNSON MANAYANI
SRI.BENHUR JOSEPH MANAYANI

RESPONDENTS:

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1. CANARA BANK, OVERSEAS BRANCH, KARUNA BUILDINGS, M.G.ROAD, COCHIN-35, KERALA, REPRESENTED BY ITS MANAGER.

2. THE RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 4938 OF 2007-K

JUDGMENT

The petitioners are the respondents in O.A.No.341/2002, filed by the 1st respondent before the D.R.T. The said application was decreed by Ext.P1 final order. The total amount due under the said order will now come to Rs.1,40,53,473.23 with interest. Admittedly, Ext.P1 has become final. The 2nd respondent recovery officer issued Ext.P2 notice for settling the sale proclamation, on 18.9.2006. The hearing for the same was held on 27.10.2006. The 1st petitioner, long thereafter, on 6.1.2007 has submitted Ext.P3 petition before the 2nd respondent, stating that the upset price fixed is very low. Subsequently the petitioners have filed Ext.P4 application for the benefit of one-time settlement scheme, on 31.1.2007, before the 1st respondent. The petitioners submit, the sale of their properties is scheduled to be held on 15.2.2007. In the above background, this Writ Petition is filed seeking the following reliefs:

> "(i) Issue a writ of mandamus or other appropriate writ, order or direction, commanding the respondents not to auction sale the petitioners' properties, in pursuant to Exhibits P1 and P2.

(ii) Issue a writ of mandamus or any other appropriate writs, directions or orders, commanding the respondents to conduct the auction sale of the petitioners' properties separately."

2. The auction is held by the 2nd respondent, on the strength of Ext.P1, which has become final. He does not owe any duty to the petitioners to stop the auction sale, on submitting a petition in the nature of Ext.P3, raising a belated dispute regarding the upset price. He also does not owe any duty to the petitioners to stop the sale, if they file Ext.P4 petition, claiming the benefits of one-time settlement scheme before the 1st respondent. Therefore, this Court is not justified in issuing a direction as prayed for by the petitioners. If the properties are sold at a very low price, the petitioners have remedies under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and they can work out the same in accordance with law. Ext.P4 petition has been filed only on 31.1.2007. If the same is maintainable in law, the petitioners can pursue the same with the 1st respondent. It is too early to accuse the 1st respondent of not having considered that representation.

In the result, the Writ Petition fails and it is dismissed without prejudice to the contentions of the petitioners.

13th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/